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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,727	10/26/2001	John E. Sims	3151-A	9375
22932	7590	02/08/2005	EXAMINER	
IMMUNEX CORPORATION LAW DEPARTMENT 1201 AMGEN COURT WEST SEATTLE, WA 98119			LI, RUIXIANG	
			ART UNIT	PAPER NUMBER
			1646	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/061,727

Applicant(s)

SIMS ET AL.

Examiner

Ruixiang Li

Art Unit

1646

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 12/17/2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 23 July 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.


The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1,2 and 7.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 5,6 and 9-11.Claim(s) withdrawn from consideration: 3,4,8 and 12-14.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
JANET ANDRES  
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: all the rejections set forth in the final rejection (Paper No. 0217, 02/24/2004) are maintained.

(i) The rejection of claims 5, 6, 9, and 10 under 35 U.S.C. 112, 1st paragraph for description is maintained because Applicants fail to address the rejection (neither argue nor amend the claims).

(ii) The rejection claims 10 and 11 under 35 U.S.C. 112, second paragraph is maintained. Applicants argue that because the polypeptide which is prepared is defined by the expression vector which is recited in the body of the claim. Applicants submit that the use of polypeptide is in the preamble and is not a defining term. This is not persuasive because a host cell transfected with the expression vector would produce the polypeptide recited in the claims, as well as the polypeptides that a host cell normally expresses. Since neither the preamble nor the body of the claim indicates what protein is to be made by the process, the claim is indefinite.

(iii) The rejection of claims 5 (part h), 6, 9, and 10 under 35 U.S.C. 102(b) as being anticipated by Huang et al. (Proc. Natl. Acad. Sci. USA 94:12829-12832, 1997) and the rejection of claims 5 (part h), 6, 9, and 10 under 35 U.S.C. 102(e) as being anticipated by Cao (US Patent No. 6,280,955) are maintained. Applicants argue that the amended claim 5 e) recites only part c). Thus, the claimed polynucleotide is not within nucleotides 1-1354 taught by the cited art. This is not persuasive because the amended claim 5 c) recites a polynucleotide that encodes a polypeptide comprising amino acid residues 449-687 of SEQ ID NO: 2 (note the open language "comprising") and thus encompasses the polynucleotide set forth in SEQ ID NO: 1. The two references teach a cDNA, which encodes an interleukin 1 receptor accessory protein (that interacts with an IL-1R signal transduction factor) comprising the amino acid residues 1 to 448 of SEQ ID NO: 2 and shares 51.7% sequence identity with SEQ ID NO: 1. This cDNA would hybridize to the polynucleotide of SEQ ID NO: 1 under conditions of moderate stringency as recited in the claim 5, part e), meeting the limitations of claim 5, part e). Claims 6, 9, and 10 are rejected as dependent claims from claim 5.

(iv) The objection to claims 5, 6, 9, and 10 for reciting unelected subject matter has been withdrawn in view of Applicants' amendment to the claims.